



Legal Community Against Violence

expertise, information & advocacy to end gun violence

LCAV Model Resolution
**URGING LAW ENFORCEMENT TO SEND LETTERS TO PROSPECTIVE HANDGUN
PURCHASERS
(LOCAL GOVERNMENTS IN CALIFORNIA)**

May 2009

About LCAV and Our Model Laws

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, www.lcav.org, is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

This report and model resolution do not offer, and are not intended to constitute, legal advice.

Executive Summary

Legal Community Against Violence (LCAV) has developed a model resolution for use by California jurisdictions urging law enforcement to send letters to prospective handgun purchasers who reside in the jurisdiction to inform them of their responsibilities as firearm owners.

California law requires all purchasers of firearms to complete a "Dealer Record of Sale" (DROS) form at a licensed firearms dealership.¹ The information provided on the form is then used to complete a background check on the purchaser. California law allows the Department of Justice (DOJ) to maintain information obtained regarding handgun purchasers from DROS forms in a central registry. California law also prohibits a licensed firearms dealer from transferring a firearm within ten days of the application to purchase.

¹ References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model resolution below.

In July 2005, the Los Angeles City Attorney's office, in cooperation with DOJ and the Los Angeles Police Department, began distributing letters during the ten-day waiting period to handgun purchasers in certain areas of the City. DOJ forwards the name and address of these individuals to the City Attorney every morning. The City Attorney then sends the letters to the purchasers. The letter, signed by the Attorney General, the City Attorney, and the Chief of Police, reminds the handgun purchaser, in English and Spanish, that if he or she decides to give or sell the handgun to someone else, he or she must complete a DROS form, which can be completed at any gun store. The letter also mentions that if the gun is recovered in connection with a crime, the Los Angeles City Attorney will prosecute the gun's previous owner if the owner did not complete the DROS form.

Since distribution of these letters began, the number of handgun purchasers who have failed to pick up their handguns at gun stores after the waiting period has expired has increased significantly. A statistical analysis is underway to determine exactly how the letters have affected the likelihood that a handgun purchaser will abandon the firearm at the gun store. However, preliminary findings have shown that the letters have made handgun purchasers twice as likely to leave their handguns at the gun store after the waiting period has expired, possibly because those purchasers were intending to transfer their handguns to persons prohibited from possessing them.

DOJ has not yet extended the program outside of Los Angeles. However, Penal Code § 11106 requires DOJ to provide peace officers with information about handgun purchasers "upon proper application" for any purpose. A city police or county sheriff's department may, therefore, routinely seek this information from DOJ and send letters to the handgun purchasers who reside in that jurisdiction during the waiting period.

Besides information about the state requirement that all transfers of firearms be processed through a licensed dealer, the jurisdiction may include other information in its letter to handgun purchasers. The jurisdiction could inform new handgun purchasers that the state imposes criminal liability on adults who leave firearms accessible to children under the age of 18, when the adult knows or reasonably should know that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, under certain circumstances.

The jurisdiction could also include information about the proper storage of firearms in the home. In 2005, 1,060 Californians under the age of 25 died from a gunshot wound. The presence of unlocked guns in the home increases the risk not only of accidental gun injuries but of intentional shootings as well. However, the practice of keeping firearms locked and unloaded, and of storing ammunition in a locked location separate from firearms, significantly decreases the risk of suicide and unintentional injury in homes with children and teenagers. As a result, the jurisdiction may wish to encourage new handgun owners to store their guns in this manner.

Letters to handgun purchasers also present an opportunity for jurisdictions to advise those purchasers about any firearms laws which are unique to their jurisdiction. For example, a number of jurisdictions in California, including Los Angeles, Oakland, Sacramento and San Francisco, require firearm owners to report to law enforcement the loss or theft of any firearm within a certain amount of time after they discovered or should have discovered the loss or theft.

If the jurisdiction has this requirement, it should describe it in the letters sent to handgun purchasers during the waiting period.

LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to pass this resolution or enact other measures to reduce gun violence. Please see www.lcav.org for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

Text of Model Resolution

_____ City Council/County Board of Supervisors*

Resolution No. _____

RESOLUTION URGING THE CHIEF OF POLICE/SHERIFF TO SEND LETTERS TO PROSPECTIVE HANDGUN PURCHASERS WHO RESIDE IN THE JURISDICTION INFORMING THEM OF THEIR RESPONSIBILITIES AS FIREARM OWNERS

[Findings regarding the need for and benefits of this resolution should be included. Findings in support of a resolution are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

Whereas, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;²

Whereas, California Penal Code § 11106 requires the Department of Justice to compile information about prospective handgun purchasers based on information received from firearms dealers at the time of application, and to furnish this information to peace officers of the state upon any proper request,

Whereas, Penal Code § 12071(b)(3)(A) prohibits delivery of a firearm until ten days have passed since the purchaser has submitted an application to purchase the firearm,

Whereas, California law imposes certain responsibilities on firearm owners, including the responsibility to process all secondary transfers of firearms through a licensed firearms dealer, thereby allowing the Department of Justice to run a background check on every recipient of a firearm,³

Whereas, Penal Code §§ 12035 and 12036 impose criminal liability on adults who leave firearms accessible to children under the age of 18, when the adult knows or reasonably should know that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, under certain circumstances,

Whereas, the U.S. Centers for Disease Control and Prevention reports that 1,060 Californians under the age of 25 died from a gunshot wound in 2005,⁴ and studies have found that: 1) the

* Where the words "Chief of Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

² California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

³ Penal Code §§ 12072(d), 12076.

⁴ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Web-Based Injury Statistics Query & Reporting System (WISQARS)*, *WISQARS Injury Mortality Reports, 1999-2005* (2008), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

presence of unlocked guns in the home increases the risk of both accidental and intentional shootings;⁵ and 2) the practice of keeping firearms locked and unloaded, and of storing ammunition in a locked location separate from firearms significantly decreases the risk of suicide and unintentional injury in homes with children and teenagers,⁶

*[If the City/County **has** an ordinance requiring the reporting of lost or stolen firearms, the following or similar language may be included:*

Whereas, firearm owners in the City/County are obligated to report all lost or stolen firearms to the Chief of Police/Sheriff within ____ hours of the time they discovered or should have discovered the loss or theft,]

*[If the City/County **does not have** an ordinance requiring the reporting of lost or stolen firearms, the following or similar language may be included:*

Whereas, information about lost or stolen firearms provides law enforcement with the opportunity to investigate and prevent potential gun trafficking and the use of guns in crime,]

Whereas, in July 2005, the Los Angeles Police Department began receiving the names and addresses of prospective handgun purchasers residing in targeted areas of the City from the Department of Justice, and began distributing letters during the ten-day waiting period to those purchasers informing them of their responsibilities as firearm owners,⁷

Whereas, the letter sent out to prospective handgun purchasers by the Los Angeles Police Department states that it is a crime to sell or give a gun to anyone without first completing a Dealer Record of Sale (DROS) form at a gun store, and if the police recover a gun involved in a crime, the City Attorney will prosecute the previous owner if he or she did not fill out a DROS form,

Whereas, preliminary findings regarding the Los Angeles program indicate that local handgun purchasers who receive the letters are twice as likely as local handgun purchasers who do not receive the letters to leave their handguns at the dealership after the waiting period expires, suggesting that these purchasers may have been intending to illegally transfer these handguns to persons prohibited from possessing them,⁸

NOW, THEREFORE, BE IT RESOLVED: That the City Council/County Board of Supervisors by adoption of this resolution hereby urges the Chief of Police/Sheriff to request that the Department of Justice provide, on a daily basis, the names and addresses of prospective handgun purchasers who reside in the City/County to the Chief of Police/Sheriff.

⁵ David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-inflicted & Unintentional Firearm Injuries Among Children & Adolescents: The Source of the Firearm*, 153 Archives Pediatric & Adolescent Med. 875 (Aug. 1999), at <http://archpedi.ama-assn.org/cgi/content/short/153/8/875>.

⁶ David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (Feb. 2005).

⁷ Mayor Antonio R. Vallaraigosa, *City of Los Angeles*, 2008 Gang and Gun Violence Enforcement Initiative, May 29, 2008.

⁸ For more information about the program in Los Angeles, please contact Peter Shutan, Assistant Supervising Attorney, Gang Division, Office of the Los Angeles City Attorney, (213) 978-4659.

FURTHER RESOLVED: That the Chief of Police/Sheriff is encouraged to send letters to prospective handgun purchasers residing in the City/County at the start of the ten-day waiting period advising them of their obligations as firearm owners, and

FURTHER RESOLVED: That the letters sent by the Chief of Police/Sheriff should inform the purchaser that:

(1) It is a crime to sell or give a gun to someone else without first completing a Dealer Record of Sale (DROS) form at a gun store, and if the police recover a gun involved in a crime, the City Attorney may prosecute the previous owner if he or she did not fill out a DROS form;

(2) Penal Code §§ 12035 and 12036 impose criminal liability on adults who leave firearms accessible to children under the age of 18, when the adult knows or reasonably should know that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, under certain circumstances;

(3) In order to decrease the risk of unintentional injury and suicide, the purchaser should store every firearm unloaded using a trigger lock or inside a gun safe, and store ammunition separately from firearms; and

*[If the City/County **has** an ordinance requiring the reporting of lost or stolen firearms, the jurisdiction may wish to include the following language:]*

(4) The purchaser is legally required to report all lost or stolen firearms to law enforcement in accordance with [the local ordinance].

*[If the City/County **does not have** an ordinance requiring the reporting of lost or stolen firearms, but the jurisdiction nevertheless wishes to encourage such reporting, the following language may be included:]*

(4) The purchaser should report all lost or stolen firearms to law enforcement.